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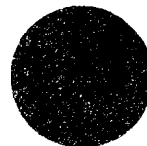
RECEIVED COUNCIL

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April 27, 2000

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Honorable Michael Subin  
President  
Montgomery County Council  
100 Maryland Avenue  
Rockville, Maryland 20850

RE: Bill 10-00, *Collective Bargaining - Police Sergeants*

Dear President Subin:

In advance of Council's consideration of Bill 10-00 and amendments, Lodge 35 and its Supervisors Committee <sup>1</sup> strongly urges the following:

- o That the existing bargaining unit be expanded to include sergeants subject to a vote by sergeants to determine if they want to be represented. Thereafter, they would be eligible to participate in any representation election.
- o That sergeants have the right to bargain "effects" of the exercise of existing management rights.

At a meeting of sergeants held on April 25, 2000, all but one sergeant in attendance voted to support the above. The one who did not vote for these provisions was undecided. None was opposed.

In a memorandum dated April 7, 2000 [MFP 1, 4/11/00, C. 23-26] Jim Torgesen, Labor/Employee Relations Manager, OHR, correctly identified four criteria commonly applied in determining unit composition. These include: Desires of Employees, History of Representation, Extent of Union Organization, and Community of Interest.

<sup>1</sup> The Lodge 35 Supervisors Committee is a functional unit of FOP Lodge 35 and was first created in 1982, then rechartered in 1996 for three basic purposes: 1. To recognize the importance of supervisors within the FOP; 2. To coordinate FOP representation of police supervisors; and 3. To pursue collective bargaining rights for police sergeants. The committee is chaired by a police sergeant and all of its members are Montgomery County police sergeants. In accord with Lodge 35 Bylaws, the president is an *ex officio* member of all committees.

Michael Subin  
April 27, 2000

Page Two

**Desires of Employees** At a Supervisors Committee meeting called and chaired by their peers, MCP sergeants voted their desire in detail, *supra*. In stark contrast, the OHR memorandum relates that the chief of police [management] held *separate* meetings - one with sergeants (where attendance was "mandatory", Attachment 1) and another with lieutenants and captains. OHR says that the police "chief concluded from these two meetings that employees in the ranks of sergeant, lieutenant, and captain were interested in . . . collective bargaining." Significantly, OHR does not state that it was the desire of sergeants to be in a bargaining unit with lieutenants and captains. Indeed, any such conclusion would be inaccurate. Moreover, employees should be allowed to express their desire directly or as a group, without management involvement, such as the Sergeants Committee, and not through management. (87% of current sergeants are active, dues-paying members of FOP Lodge 35.) <sup>2</sup>

**History of Representation** As stated in our public testimony, Lodge 35, which is the certified representative of non-supervisory police officers, has a long, proud tradition in representation of all members, including sergeants. While one or another organization may have represented a few sergeants in the past, the fact remains that the organization representing the current unit has provided more extensive representation to the vast majority of individual sergeants represented in the past 19 or more years.

The Immediate Past President of Lodge 35 was a police sergeant.

From July 1, 1983, the effective date of our first contract, to June 30, 1988, the expiration date of our second contract, FOP dues for sergeants were deducted pursuant to those contracts. Effective July 1, 1988, the County unilaterally, and for political reasons only, discontinued FOP dues check-off for sergeants. And, as stated in our public hearing testimony, the County, through OHR, filed a Charge of Prohibited Labor Practice against Lodge 35 for representing sergeants. The Charge was later withdrawn, but stands as a monument to the history of our representation of sergeants.

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<sup>2</sup> In a March 16, 2000 letter to Mr. Berlage [MFP 1, 4/11/00, C. 22], the Alliance of Police Supervisors said that, on April 16, 1998, they surveyed sergeants to determine their interest and stated: "The results of this survey indicated that 60% of the sergeants wanted the Alliance of Police Supervisors to represent them." Choice of representative is a decision to be made by all sergeants, by secret ballot, not by survey. However, on April 7, 1998, nine days earlier, lieutenants and captains were surveyed by the Alliance of Police Supervisors via a memorandum addressed to "Alliance of Police Supervisor Members." That survey presented two choices: Yes, I am interested in one organization to attain collective bargaining or No, I believe the Sergeants should have a separate bargaining organization. (Attachment 2.) The options were limited and, while it is not our intention to involve Council in a representation debate, we present this issue for the sole purposes of 1. pointing out that the stated result is not consistent with the action taken at our meeting of last Tuesday and 2. demonstrating that the referenced survey is not a valid indicator of the desire of employees.

**Extent of Union Organization** OHR correctly notes that the unit structure in the metropolitan area and Maryland is mixed. North of the Mason-Dixon Line, union representation isn't treated as such a major threat. However, here, south of that Line, Prince George's County, the only other Maryland jurisdiction with binding arbitration, has a single contract covering all officers through the rank of lieutenant, negotiated by FOP Lodge 89.<sup>3</sup> Washington, D.C., which also has binding arbitration, is a single unit that includes sergeants. The MNCPPC police, which is partly Montgomery County funded, has a single unit that includes police sergeants.

Baltimore County has a single unit that includes all officers through the rank of lieutenant, represented by FOP Lodge 4. Baltimore City has a separate unit for sergeants and lieutenants represented by FOP Lodge 3. Anne Arundel has a separate unit for sergeants, represented by a different union. (There has been considerable turmoil in AA County over the years, including two representation elections between the Teamsters and FOP Lodge 70 which represents non-supervisory officers.) Howard County sergeants do not have bargaining rights. However, in several smaller jurisdictions, sergeants are in the same unit as non-supervisory officers.<sup>4</sup>

In the two area jurisdictions with binding arbitration, sergeants are represented by the same union and covered by the same contract.

As noted, the MNCPPC police have a unit that includes sergeants. In the Montgomery County school system, certain non-certificated supervisory employees are in the same unit as nonsupervisory employees and represented by SEIU Local 500. Certificated employees are in two units, one represented by MCEA and the other represented by MCAASP. MCEA represents Resource Teachers and Teacher Specialists.<sup>5</sup> For budgetary and political reasons, care has been taken to avoid labeling these teacher positions as "supervisors," but the fact remains that, in practice, they perform jobs comparable to those of police sergeant. While the Executive may want to dispute the comparison, we suggest that it is merely a matter of semantics on his part. Attachment 3.

Moreover, State law which governs school employee collective bargaining, does not exclude supervisory employees from non-supervisory unions.

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<sup>3</sup> Mr. Torgesen is correct that PG County technically has separate units - one for non-supervisory employees and another for sergeants and lieutenants. However, one union is recognized and certified for both units and one contract covers both units. It was not the intent of Lodge 35 to mislead Council on this most technical issue. Knowing that FOP 89 has, for many years, had but one contract, we were simply mistaken.

<sup>4</sup> Of the Chartered Maryland counties (including Baltimore City) with separate County (City) police departments, all but two (Howard and Montgomery) provide collective bargaining rights for sergeants. In Harford County, the Sheriff's Office provides police services.

<sup>5</sup> In the early 1970s, school administrators were represented by MCEA. Later, at the request of MCEA, a separate unit was created for school administrators who are represented by another organization.

**Community of Interest** OHR says that "community of interest is of prime importance." And, says OHR: "Community of interest generally includes similarities in duties, skills and working conditions." We agree. However, OHR and the County Executive seek to set parameters that seem to fit their goal, i.e. one unit to include captains. They further resort to the "conflict of interest" scare tactic. In response, we submit that if there is a conflict of interest with a sergeant and a police officer whom s/he supervises being in the same bargaining unit, surely, there must be a conflict of interest between a captain and a sergeant being in the same unit.

It seems contradictory to the Executive's position that he proposes captains, who are two ranks above sergeants, be in the same unit with sergeants and involved in interpreting and administering the same contract that would cover both sergeants and captains.

It is curious that when the executive branch and OHR were opposing the current collective bargaining charter provision that there was no concern that the "interests of the supervisor [may have been] blurred [when both supervisors and non-supervisory officers were] covered by the same [rules, policies, and personnel regulations] that they [were] required to enforce."

We are puzzled that OHR and the Executive are concerned about how a sergeant might be expected to behave in a grievance proceeding if s/he were a member of the same unit as those s/he supervises when, since 1983, contract grievances are submitted directly to the police chief for initial resolution while **the County's unilaterally implemented grievance procedure [AP 4-4], applicable to non-supervisory officers in a few matters, provides for first step review by the immediate supervisor.**

More importantly, Lodge 35 credits police sergeants with the honor and integrity to do their jobs without evil intent or misconduct. They have demonstrated their integrity over the years of FOP representation and the history of that representation is proof that the alleged concerns of OHR and the Executive are without factual basis. We challenge the Executive to give us evidence of actual conflict that has occurred since Lodge 35 was chartered in 1969.

We could argue this matter for weeks, however, area jurisdictions, particularly those with binding arbitration, include sergeants in the same unit or under the same contract as non-supervisory officers.

Hence, this is purely a political decision. Politics, not facts, are the driving force behind the Executive's proposal.

Community of interest involves other factors not addressed by the executive. Working conditions between most sergeants and the existing unit are nearly **identical**. This is not true of sergeants and lieutenants or captains. Sergeants are assigned to shifts, they work shift work, they routinely respond to calls for service and make arrests. They make traffic stops, and they patrol. Simply put, they are field supervisors. Lieutenants and captains are not "field" supervisors, rather, by the department's own definition, they are "executive" officers.

The department holds executive-level meetings with its "executive" officers and, in a recent training offering, a course has a separate session for lieutenants and above.

Lieutenants and above even wear slightly different uniforms. <sup>6</sup>

Clearly, the working conditions of sergeants are more similar to those of nonsupervisory officers.

**Other Factors** In the private sector, supervisors are precluded from bargaining. In the private sector, employees have the right to strike and have a broader scope of bargaining than their public sector counterparts. Traditionally, due to the nature of the job, police supervisors have been afforded bargaining rights and it is not uncommon for them to be included in the same unit as non-supervisory employees. <sup>7</sup>

Unlike many other County positions and the private sector, every incumbent police sergeant was promoted from a non-supervisory Montgomery County police officer position. This is significant. Furthermore, all sworn police officers below the rank of police chief are in a common retirement system (Group F).

**EFFECTS BARGAINING** Effects bargaining is but another distraction. OLO Report 99-2 commented on effects bargaining without ever affording Lodge 35 an opportunity to comment. A Council Resource Committee, consisting of a diverse group of County residents (including the president of Lodge 35), was created to look into the police complaint system. OLO's charge was to address the complaint system.

After input from the Executive, OLO, without consultation with either the Resource Committee or Lodge 35, raised this issue. Effects bargaining is fairly common in the public sector in recognition that public sector bargaining rights are more limited than in the private sector.

We are disappointed that OLO denied Lodge 35 a fair opportunity to comment and explain this issue before it was raised in a formal report. (We did not see the final report until the late on the evening before it was publicly presented.) Notwithstanding the influence Council staff has within the institution of the County Council as a "part-time" body, fairness dictates that we be heard on matters affecting our interests. Council staff's perspective is frequently distorted and they seldom seek our views on issues within our expertise. (We do not refer here to individual Councilmembers' staff and aides.)

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<sup>6</sup> We express no opinion about lieutenants having bargaining rights or being included in our bargaining unit. The bill before you pertains only to sergeants.

<sup>7</sup> All sworn police officers, regardless of rank, are constitutional officers. *Bradshaw v. Prince George's County*, 284 Md. 294, 396 A.2d 255 (1979). See also 72 Op. Atty Gen. Md. 271, January 13, 1987) A police officer may not serve as a member of the Maryland House of Delegates because both are constitutional "office[s] of profit." (In the General Election of 1996, the Maryland Declaration of Rights was amended to permit police officers and certain other public officials to simultaneously hold additional offices. This amendment did not, however, change the "public official" status of police officers.)

We would have welcomed an opportunity for full and open discussion of "effects bargaining" as well as the arguments put forth by the County in formal court pleadings, never considered or known to staff, which relate to the concerns the Executive claims he has in this important matter.

Even at this point, we invite that discussion, and point out that the recent Department of Justice findings were critical only of management's exercise of its rights, not of those matters that were collectively bargained.

Of considerable import, is the additional fact that it was only through the cooperation and leadership of FOP Lodge 35 that an agreement was reached between the County, DoJ, and Lodge 35 to improve police services and the complaint process, thereby avoiding litigation. In Pittsburgh, PA litigation continues despite a consent decree and in Columbus, Ohio, litigation has been initiated.<sup>8</sup>

It is no coincidence that here, in Montgomery County, we resolved important issues without litigation and that Lodge 35 has been overwhelmed with calls for assistance and requests to share its DoJ experiences with other unions throughout the Nation.<sup>9</sup>

We should be proud that DoJ, the County, and the police union have come together to enter into an agreement that serves as model for a collective bargaining law that enables cooperation and flexibility to resolve the effects of management rights short of full blown, disruptive federal litigation. It is unfortunate that the Executive has asked Council to dilute the law that enabled such cooperation.

Under the law, management has certain rights, i.e. the right to assign, transfer, lay-off due to lack of funds or work, determine methods of operation, and the union may bargain the effects of management's exercise of those rights upon employees. Effects bargaining does not prevent management from exercising its rights. For example, under the current contract, management may schedule employees. However, if it schedules employees without sufficient advance notice, it must compensate and make whole employees affected by the change. Unit members and sergeants have family and child care concerns and it is out of sensitivity for those concerns that effects have been bargained. Without effects bargaining, a schedule could be changed and an employee would be immediately (or on short notice) required to find care for an infant or young child and report for work without additional consideration. This is contrary to a County that talks of "Family Friendly Work Policies."

"Effects bargaining" does not prevent management from exercising its rights. It merely balances the interests of the employer and employee and, at best (or worst, depending on one's perspective) requires the employer to think about the effects of its intentions before it acts.

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<sup>8</sup> In Pittsburgh, DoJ and the City entered into an agreement over the objections of FOP Lodge 1. Thereafter, FOP Lodge 1 arbitrated changes that "effected" the consent decree. The City sued and the matter is pending in Federal court. In Columbus, the City and DoJ entered into a proposed consent decree. The FOP refused to agree and DoJ sued the City. Both suits are pending.

It is notable that every single Montgomery County police officer was furloughed several years ago despite effects bargaining, which did occur. And that crime has decreased in recent years, that the Cuban Interest Section residence was recently protected, and that we were prepared to go into Washington, D.C. to assist in the event of major civil disturbance during the recent World Bank/International Monetary Fund meetings without any "effects" problems.

Effects bargaining is especially important in police work because of the toll such work takes on the individual and family.

Since September 1999, two examples of "effects bargaining" have been raised before Council. One concerned pornography on the internet and the other was qualification of weapons. We will briefly comment on each.

Management submitted a proposal to Lodge 35 concerning use of County computers. That proposal was submitted pursuant to Article 61 of our contract. There was never any dispute over the issue of pornography on the internet. There was, however, considerable discussion about e-mail confidentiality, disciplining officers for sending their mothers birthday or Mother's Day greetings, and playing computer games such as "Hearts" or "Solitaire" on County computers. As we discussed these matters, the police department's representative was playing a computer game on a County computer. We asked if there was a County-wide policy on the use of e-mail. After discussions, the County withdrew its proposal. More recently, they indicated a desire to discuss it again, but have not followed through.

Over the years a very few officers have had difficulty qualifying with firearms. Through additional training and practice, all have qualified. Last year, three officers had difficulty. One qualified on the second round; one involved a disabled officer who was able to qualify; and the third was a non-bargaining unit member.

The State of Maryland has established firearms qualification standards. No Montgomery County police officer has carried a firearm in violation of those standards.

In neither of these matters has management implemented rules or procedures for non-unit members as it has the authority to do.

Additionally, much of what has been touted as "effects bargaining" is actually direct bargaining over working conditions. (In a Gazette article, former chief Thomas Evans mentioned the quality of toilet paper as being an example of "effects bargaining." We have never engaged in a controversy over quality of toilet paper, but if we did, it would fall under working conditions, not effects bargaining.)<sup>9</sup>

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<sup>9</sup> Under normal circumstances, Lodge 35 would not comment on petty issues like toilet paper, but since the recently retired deputy police chief raised the issue in a news article, we feel compelled to respond. Under our contracts, dating to 1983, there has never been a grievance over toilet paper. However, prior to legislation granting other County employees the right to bargain collectively, a police dispatcher did file a County grievance over lack of toilet paper in the women's rest room at ECC. That grievance was resolved.

Michael Subin  
April 27, 2000

Page Eight

Topics such as "pornography" and "guns" make for great sensationalism and political fodder for anti-unionists, but the facts defy the rhetoric. Scare tactics frequently are effective means of depriving others of their rights. Senator Joseph McCarthy was a master at the game.

Such tactics currently are being employed to bully Council into funding "School Resource Officers" and it makes for great press, but does the Executive really believe that a single "School Resource Officer" in a school, armed with a 9 mm handgun, will save lives of students if two suicidal, heavily armed students open fire in a school cafeteria or library?

We urge Council to deal with facts, not respond to shallow tactics.

As with unit designation, effects bargaining is purely a political decision and does not adversely affect public safety.

**Position Exemptions** The Executive asks that you exempt certain positions from bargaining. The rationale for such exemptions could extend to all captains and above.

Since 1982, unit members have held positions in internal affairs, personnel (human resources), policy development, and others. In 18 years there has not been a conflict. In addition, current unit members have held supervisory positions on an acting basis without conflict.

The exclusion of certain employees whose counterparts have collectively bargained benefits and wages does not work in the field of policing. The Executive's proposal requires two pay scales -- one for represented supervisors and another for unrepresented. It creates conflict and confusion within an occupational classification -- especially at the sergeant level.

**Other Considerations** Inclusion of sergeants in the existing unit, after democratic vote, will have minimal impact upon the Executive and his staff. On the other hand, creation of a new unit will require separate bargaining and separate mediation and arbitration despite union certification. If a separate unit is created for sergeants, whether Lodge 35 or any other union is elected representative, negotiations will take place at different times, and arbitration will be conducted, possibly with a different arbitrator, separate from the existing unit. Two contracts will be produced.

The Executive will be bound to the outcomes of both agreements, both arbitrated and non-arbitrated. The Executive must provide for both agreements in his/her recommended budget. And, the representative(s) of each unit will appear before Council in support of each agreement notwithstanding any differences.



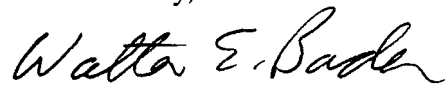
Michael Subin  
April 27, 2000

Page Nine

In conclusion, there is ample evidence that sergeants can be included in the same unit and/or under the same contract as non-supervisory employees without conflict. It has worked elsewhere and can work here. There is no valid reason why effects bargaining should not apply to sergeants.

Your consideration is appreciated and we ask for Council's support.

Sincerely,

A handwritten signature in cursive script that reads "Walter E. Bader".

Walter E. Bader  
President

A handwritten signature in cursive script that reads "Kirk J. Holub".

Kirk Holub  
Chair, Supervisors Committee

cc: Mr. Andrews, Lead, MFP  
Mr. Berlage  
Mrs. Dacek  
Mr. Denis  
Mr. Ewing  
Mr. Leggett  
Mrs. Praisner, Chair, MFP Committee  
Mr. Silverman

